



POLICE DEPARTMENT

February 26, 2018

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In the Matter of Charges and Specifications	:	Case No.
- against -	:	2015-13679
Police Officer Michael Corizzi	:	
Tax Registry No. 946879	:	
47 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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Charges and Specifications:

1. Said Police Officer Michael Corizzi, assigned to the 47th Precinct, while on-duty, on or about January 16, 2015, in the vicinity of Furman Avenue and East 240th Street, in Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he searched a vehicle driven by Mr. Tyrone Fox, without sufficient legal authority.

P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED CONDUCT

SUMMARY OF FINDINGS

The above-named member of the Department appeared before the Court on January 23, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Tyrone Fox as a witness. Respondent called Police Officer Robert Hoey and Detective Michael Summa as witnesses and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, I find Respondent Not Guilty.

ANALYSIS

It is undisputed in this case that on January 16, 2015, at approximately 12:30 a.m., Mr. Tyrone Fox was driving his Mercedes-Benz SUV southbound on Furman Avenue in the Bronx. Furman Avenue is a two-way street with no center dividing line. A truck was stopped in the southbound lane on Furman Avenue between 240th and 241st Street. Mr. Fox drove into the northbound lane in order to get around the truck. Respondent, along with Officers Robert Hoey and Michael Summa, were traveling northbound in the northbound lane in an unmarked police vehicle. They made a U-turn after Mr. Fox drove past them and activated their lights when they came behind Mr. Fox's vehicle. Mr. Fox stopped his car.

The officers got out of their car and approached Mr. Fox. There are different versions of what took place at the car. A knife was recovered from Mr. Fox's vehicle. Mr. Fox testified that the knife was in a closed center armrest console which an officer opened to obtain the knife. Respondent testified that the knife was in plain view in a flat area under the radio.

At trial, Mr. Fox testified that after he stopped his car, four plain-clothed men, who he assumed were detectives, approached his car. An officer ordered him to open the window and asked him where he was coming from. (Tr. 22-23) He testified that they did not ask for any identification, registration or insurance, nor did they ever tell him why his vehicle was stopped. (Tr. 23, 36) He told the officers he was returning from getting gas. An officer looked in the car and told him to get out. (Tr. 22-24,) Mr. Fox further testified that when he exited his vehicle an officer pushed him against the door, spread his legs and searched him, from "top to bottom." (Tr. 24) He first testified that he observed another officer, who was on the passenger side, go inside his vehicle and take everything out of the hand rest, which he described as being like a bucket when you open it. (Tr. 24) He next testified that the officer who had him outside was the one that went into the driver's side and opened the armrest and took everything out. (Tr. 25) In response to the Advocate's request for clarification, Mr. Fox agreed that a second officer went to the front passenger side of his vehicle. Mr. Fox then testified that he thinks the one that was searching him went into the armrest compartment. (Tr. 26) Mr. Fox then testified that one officer went into the glove compartment and the officer who was searching him went into the armrest compartment. (Tr. 27) He saw this officer open the latch of the armrest and take everything out, including a pen knife that Mr. Fox used as a utility knife and to peel fruit, as he is a diabetic. (Tr. 29-30) Mr. Fox further described the knife, which he bought in 1983, as a dull knife which must be opened manually. It was about two to three inches long and was brown. (Tr. 30-31, 40)

Mr. Fox testified that after the knife was discovered another officer went into the trunk and took everything out of the trunk. He was then placed in handcuffs. The only question Mr. Fox was asked was if the knife looked like a Jamaican knife. He didn't reply. (Tr. 32) Mr. Fox was taken to the 47 Precinct where he was given paperwork indicating he had been arrested for having the pen knife and that he had to appear in court on a specified date. (Tr. 34) He did appear in court and was told the case was dismissed and everything would be erased from his record in six months. (Tr. 35)

On cross-examination, Mr. Fox testified that he was "a million percent sure," that the officers he encountered that evening were in plain clothes. He again testified that the officers said nothing to him except to roll down the window before he got out of his car. (Tr. 53) With regard to the positions of the officers, he testified that one was on the driver's side with him and "maybe two" were in the back. He is sure that the one who ordered him out of the car and searched him is the officer who searched the armrest console. (Tr. 54-56, 58) Mr. Fox testified that he was not handcuffed at the time this officer searched the armrest console. This officer left Mr. Fox alone while three or four officers went through the entire car. (Tr. 59) A different officer searched the glove compartment. (Tr. 56)

With regard to the knife, Mr. Fox testified that two officers had examined his knife before the date of the incident when they also had pulled him over and found the knife in an enclosed compartment in his vehicle. On that previous occasion those officers told him the knife was okay and they did not take it from him. (Tr. 60-61)

On further cross-examination, Mr. Fox stated that he did not like the way he was treated by the police on January 16, 2015, and he made a complaint about it to the Civilian Complaint Review Board ("CCRB") that same day. (Tr. 61-62) He acknowledged that he had made

approximately ten previous allegations against the NYPD to the CCRB. (Tr. 63) Counsel for Respondent read Mr. Fox a portion of the transcript from Mr. Fox's call to the CCRB on January 16, 2015, (The Advocate stipulated that the portion was read accurately – Tr. 68). The transcript indicated that Mr. Fox told CCRB that when the police stopped him they asked him for his license and he gave it to them before they took him out of the car. (Tr. 66) When confronted with this transcript, Mr. Fox continued to maintain that the officers never asked him for any identification at the scene and said the information he first gave the CCRB must be a misunderstanding. (Tr. 67) Counsel for Respondent also read Mr. Fox a portion of a transcript from his interview at CCRB on January 21, 2015. (The Advocate also stipulated that this portion was read correctly – Tr. 77) This transcript indicates that Mr. Fox told the CCRB investigators on this occasion that the officers, before they asked him to get out of his vehicle, told him the reason they pulled him over was that he went around the parked truck and also asked him for his driver's license. (Tr. 75-76)

Respondent called both officers who were working with him on the night in question as witnesses. Officer Hoey, a ten year member, was assigned to conditions auto in the 47 Precinct on January 16, 2015. (Tr. 80-81) He testified that he, Respondent and Officer Summa, were all in uniform, and were patrolling in an unmarked car. With regard to the uniforms, Officer Hoey testified that the conditions unit never went out in plain clothes. (Tr. 82-83) Officer Hoey had worked with these two officers on conditions for a year or two. (Tr. 83) Officer Hoey was the driver that night. He remembers that as they were driving northbound on Furman Avenue, they observed a double parked vehicle facing southbound. As they approached this double parked vehicle another vehicle came into their lane heading towards them and they had to stop short to avoid a head-on collision. (Tr. 84-85) The officers then made a u-turn after the vehicle passed

them and decided to conduct a traffic stop of the vehicle for a failure to yield traffic violation. After they stopped the vehicle, Officers Hoey and Summa approached the driver's side while Respondent approached the passenger side. (Tr. 86-87) Officer Summa asked Mr. Fox for his license and registration. At that point Officer Hoey observed Respondent make a pre-established sign of clenching his fists and crossing them at his wrists to indicate a possible arrest situation. Mr. Fox was ordered to get out of his car and was handcuffed. Officer Hoey testified that he observed Respondent go into the car on the passenger side and immediately come back out. Neither he, nor Officer Summa or Respondent, ever went into the vehicle to conduct any search. (Tr. 88-91, 96) Respondent informed Officer Hoey that he had found a gravity knife in the car and Mr. Fox was placed under arrest and was then searched by Officer Summa. (Tr. 92, 96) Mr. Fox was taken back to the precinct and his vehicle was left parked at the scene. (Tr. 92)

Officer Summa's testimony was essentially similar to that of Officer Hoey. He described being in full uniform, patrolling in an unmarked vehicle with Officer Hoey and Respondent, when he saw a vehicle travelling on the wrong side of the street almost hit them head on. (Tr. 100-101) He also testified that it was him and Officer Hoey who approached Mr. Fox's vehicle on the driver's side while Respondent approached the passenger side during the vehicle stop. (Tr. 102) Officer Summa further testified that he was the officer who spoke to Mr. Fox and that he asked him for his license and registration. After Mr. Fox gave him the documents, Officer Summa saw Respondent give him the signal of fists closed and crossed which indicated to him that the situation was a possible arrest. After he saw Respondent signal, Officer Summa asked Mr. Fox to get out of the car, which he did. Officer Summa then placed Mr. Fox in handcuffs at the rear of his vehicle. He saw Respondent open the passenger side door of Mr. Fox's vehicle and after that, while Officer Summa was at the back of the vehicle, Respondent showed him a

gravity knife. (Tr. 102-105) Officer Summa testified that neither he, nor the other officers, did any extensive search of Mr. Fox's vehicle, and none of them looked into the inside compartments or the trunk. (Tr. 106-107) On cross-examination, Officer Summa said he only did a frisk of Mr. Fox at the scene and searched him back at the precinct. (Tr. 109)

Respondent testified that he was in uniform in an unmarked vehicle with Officers Hoey and Summa at the time of the incident. He knows he was in uniform because as a conditions officer they were not allowed to go out in plain clothes. (Tr. 114-15) As similarly described by Officers Hoey and Summa, Respondent saw what turned out to be Mr. Fox's vehicle come into the wrong lane of traffic on Furman Avenue and almost cause an accident with the police vehicle. The officers made a U-turn and caught up with Mr. Fox in seconds. (Tr. 116)

Respondent testified that after Mr. Fox stopped his vehicle, Respondent exited his police vehicle and approached the passenger side of Mr. Fox's vehicle. While Officers Hoey and Summa were at the driver's side, Respondent looked into Mr. Fox's vehicle with a flashlight. He saw a folding knife in a flat area in the center of the vehicle under where the radio was. The knife was in plain view. Respondent does not remember seeing anything else in this area of the vehicle. At that point he gave a signal to Officer Summa that there was something in the vehicle. Respondent doesn't remember exactly what signal he gave the other officers but there were several signals he used with his partners to indicate that they should have the driver step out of the vehicle. (Tr. 117-18, 128-29) When Mr. Fox stepped out of the vehicle, Respondent opened the front passenger door and took the knife out of the vehicle. Respondent tested the knife and saw that it was a gravity knife. (Tr. 119) Mr. Fox was placed under arrest for criminal possession of a weapon. (Tr. 120) Respondent testified that all he did was recover the knife, which took about 10-15 seconds, and he never searched Mr. Fox's vehicle. He did not open any console or glove

compartment in Mr. Fox's vehicle. He also never saw his partners search the vehicle. (Tr. 121-22, 129) Respondent did not issue Mr. Fox a summons for any traffic violation because he had the discretion not to, and since Mr. Fox was already arrested he didn't see the need to add a summons for a traffic violation. (Tr. 124) During cross-examination, Respondent testified that on some prior occasions he had issued a traffic summons to people arrested for other crimes. (Tr. 125)

While there was testimony during the course of this trial about whether the initial stop was appropriate and whether Mr. Fox's knife was actually a gravity knife, at the outset it is important to note that the only misconduct charged in this case is that Respondent searched Mr. Fox's vehicle without sufficient legal authority.

The issue is whether the knife recovered by Respondent was in the closed armrest compartment as testified to by Mr. Fox, or in plain view inside the vehicle as testified to by Respondent, and therefore excluded from any search warrant requirement. See *Tex. V. Brown*, 460 U.S. 730 (1983) (seizure of contraband on car seat in plain view of officer who had stopped car and asked for driver's license was upheld as lawful).

I find that the Department has not met its burden of proof in this case and that it is more likely than not that the knife was in fact in plain view as testified to by Respondent. Mr. Fox's testimony was less than credible in several aspects. His description of which side of the vehicle the officer who recovered the knife was on shifted during his testimony. The two transcripts of his conversations with CCRB, given very close in time to the incident, also differed from the version of facts he adamantly testified to at trial concerning whether the officers asked him for his driver's license when they stopped him. He also was not accurate concerning an important detail such as the number of officers involved in his stop.

In contrast to Mr. Fox, Respondent and Officers Hoey and Summa all testified in a straightforward and credible manner. Their testimony was consistent on the basic facts they described surrounding the traffic stop. Of note also is that Officers Hoey and Summa did not testify as to Respondent's actions that would have been outside their range of view as they were focusing on Mr. Fox. Neither officer testified that they also saw the knife in plain view inside the vehicle. I find that this adds to their credibility. Similarly Respondent did not just parrot what he heard Officers Hoey and Summa testify to. For example, while Officers Hoey and Summa described the signal Respondent gave them in detail, Respondent said he could not remember exactly which signal he had used that evening.

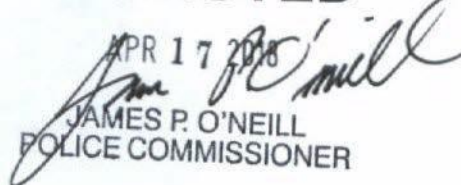
Based on the analysis above I find Respondent Not Guilty.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

APR 17 2008

JAMES P. O'NEILL
POLICE COMMISSIONER